IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 68 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESHKUMAR GANESHBHAI

Versus

STATE OF GUJARAT

Appearance:

MR VIJAY H PATEL for Petitioner

MR ND GOHIL, APP for Respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/09/2000

ORAL JUDGEMENT

This petition has been filed by the present petitioner-original complainant of Court Inquiry Case No.37 of 1994 against the judgment and order dated

3-10-1994 passed by learned Sessions Judge, Mehsana in Criminal Revision Application No.79 of 1994 whereby he has set aside the order below Ex.1 passed by the learned Judicial Magistrate (First Class), Vijapur on 30-4-1994 of sending the aforesaid Court Inquiry Case into the Special Court on the ground that J.M.F.C. is not empowered to try the offence registered under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as `the Act' for short).

2. I have heard learned advocate for the petitioner-original complainant, Mr.V.H.Patel and learned APP, Mr.N.D.Gohil for the respondent-State. I have also gone through the reasoned order passed by both the Courts.

3. It reflects from the order that while allowing Criminal Revision Application, Sessions Court has held that under the Act, only the Special Court has jurisdiction to enquire and conduct the trial for the offences registered under the Act and learned Magistrate could not have held any inquiry under Sec.202 of the Code of Criminal Procedure and could not have sent the complaint to the Special Court. Therefore, the question to be taken into consideration in the given circumstances is what will happen to the complaint which was sent to the Special Court by the learned J.M.F.C. as soon as she came to know that she has no jurisdiction to hold inquiry or proceed further into the trial, whether it will go away ? Certainly the answer is in the negative. At the most, it can be treated that the complaint has been filed by the complainant in the Court which has no jurisdiction to enquire and try. The only remedy available to the Court is to hand over the complaint back to the complainant or send it to the appropriate Court for doing the needful and learned J.M.F.C. has rightly sent the complaint together with other inquiry papers to the Special Court admittedly which has got the jurisdiction to try. It appears that learned Magistrate has recorded the statements of some witnesses and as soon as she came to know that she has no jurisdiction, she had transferred the same into the Sessions Court and, therefore, in my opinion, no illegality has been committed by the learned J.M.F.C. and, therefore, order passed by the learned Sessions Judge quashing and setting aside the order passed by the learned Magistrate is required to be interfered.

4. Order passed by the learned District and Sessions Judge in Criminal Revision Application No.79 of 1994

dated 31-10-1994 is quashed and set aside and learned Sessions Judge, Mehsana, is directed to treat the complaint of the petitioner dated 28-3-1994 as fresh and proceed further according to law after issuing notice to the complainant afresh. Rule is made absolute accordingly.

(R.P.DHOLAKIA.J.)
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